

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-99000-smb

4 Adv. Case No. 10-04311-SMB

5 - - - - - x

6 In the Matter of:

7 BERNARD L. MADOFF,

8 Debtor.

9 - - - - - x

10 IRVING H. PICARD, Trustee for the Liquidation of Bernard L.

11 Madoff Investment Securities LLC,

12 Plaintiff,

13 v.

14 ANDREW H. COHEN

15 Defendants.

16 - - - - - x

17 U.S. Bankruptcy Court

18 One Bowling Green

19 New York, NY 10004

20 July 16, 2015

21 10:08 AM

22
23 B E F O R E :

24 HON STUART M. BERNSTEIN

25 U.S. BANKRUPTCY JUDGE

1 Hearing re: Final Pre-Trial Conference

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

2

3 BAKER HOSTETLER

4 Attorney for the Trustee

5 45 Rockefeller Plaza

6 New York, NY 10111

7

8 BY: NICOLAS J. CREMONA

9 ONA THERESA WANG

10 JAMES H. ROLLINSON

11

12 LEWIS & MCKENNA

13 Attorney for the Defendant, Andrew H. Cohen

14 82 East Allendale Road, Suite 6

15 Saddle River, NJ 07458

16

17 BY: GREGORY S. GOETT

18

19

20

21

22

23

24

25

1 P R O C E E D I N G S

2 THE COURT: Picard versus Cohen. Go ahead.

3 MR. CREMONA: Good morning, Your Honor. Nicholas
4 Cremona of Baker Hostetler, appearing on behalf of the
5 Trustee. We're here, Your Honor, for the file -- final
6 pretrial conference in the Picard v. Cohen matter. We were
7 before Your Honor on June 2nd to discuss these -- this case,
8 and we were directed to submit a final pretrial order, which
9 we did last week.

10 As I'm sure Your Honor noted, we had some
11 competing contentions in that order. And I'm happy to
12 discuss them with you and answer any questions you may have.
13 But I would want to point out at the outset that I just had
14 a conversation with my colleague, and I do think there are
15 some modifications on their end as to their counterclaim and
16 their jury demand, which will inform the scope of this
17 order. So, I will cede to them to clarify that for the
18 record.

19 THE COURT: Very well.

20 MR. GOETT: Thank you, Your Honor. Gregory Goett
21 for Lewis & McKenna on behalf of defendant Andrew Cohen.
22 Pursuant to two conversations and the clients, although not
23 set forth in the initial pretrial order, my client at this
24 time does not wish to pursue his counterclaims against the
25 estate, given the financial status of the bankruptcy. And,

1 as well, given his limited means, he's retracting his demand
2 for a jury trial at this time.

3 THE COURT: I'm sorry, what --

4 MR. GOETT: He's retracting his demand for a jury
5 trial at this time.

6 THE COURT: All right. You don't have to, but I'm
7 asking whether your client consents to the entry of a final
8 judgment in this.

9 MR. GOETT: He does not on that, Your Honor. He -
10 - but he certainly does not see the need for a jury trial
11 currently.

12 THE COURT: All right. Okay. Why don't we do
13 this? I don't have any problems otherwise with the pretrial
14 order. Why don't you submit a revised, signed pretrial
15 order which reflects the changes that we've just mentioned?
16 And then I'll sign it, and the trial is already on the
17 schedule. All right? Thank you very much.

18 MR. CREMONA: Thank you, Your Honor.

19 WOMAN: Thank you, Your Honor.

20 MR. GOETT: Sorry, I apologize. There's one
21 issue. I don't know if it needs to go in the order. One of
22 our fact witnesses on defense on the tax damages, Mr.
23 Cohen's accountant, will not be available on the 14th. He
24 will -- he's an accountant.

25 THE COURT: But I don't need that testimony.

1 MR. GOETT: Okay.

2 THE COURT: Do I?

3 MR. GOETT: I'm sorry?

4 THE COURT: Because, if you withdraw your
5 counterclaims, one of your counterclaims was for the excess
6 taxes that he paid.

7 MR. GOETT: Yes, Your Honor, but it's also a
8 factor of an affirmative defense on the core value in
9 548(c), the tax damages incurred, an affirmative defense as
10 opposed to a counterclaim, Your Honor.

11 THE COURT: What do you contend your tax damage or
12 tax damages were, quote/unquote?

13 MR. GOETT: Right now, they're based of \$638,000,
14 I want to say, Your Honor, subject to -- again, we
15 (indiscernible) --

16 THE COURT: Is there a dispute about that?

17 MR. CREMONA: Your Honor, we haven't received any
18 of the documentation on that. But I would say that we have
19 indicated we're amenable to stipulating we think this is
20 relatively straightforward.

21 THE COURT: Yeah.

22 MR. CREMONA: So, we would be accommodating in
23 that respect.

24 THE COURT: Why don't you discuss it with counsel?

25 MR. GOETT: Okay.

1 THE COURT: He'll probably stipulate, because
2 their position is that it's irrelevant.

3 MR. GOETT: Of course, Your Honor. We just
4 offered proofs for purposes of preserving --

5 THE COURT: You can make your record. They can
6 stipulate to it when it's in the record.

7 MR. GOETT: Thank you, Your Honor.

8 THE COURT: And it'll save time and it'll save the
9 need to hear the accountant's testimony.

10 MR. GOETT: Thank you, Your Honor. Appreciate it.
11 Okay.

12 THE COURT: Okay? All right. So, as a matter of
13 fact, why don't you discuss it before you submit the revised
14 stipulation -- or the revised proposed pretrial order? And
15 maybe that can be resolved and you can remove all the tax
16 exhibits and everything out from it.

17 MR. GOETT: Thank you, Your Honor.

18 THE COURT: Okay. Thank you.

19 MR. CREMONA: Thank you, Your Honor.

20 WOMAN: Thank you.

21 (Whereupon these proceedings were concluded at
22 10:12 AM)

23

24

25

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.

Sonya
Ledanski Hyde

Digitally signed by Sonya
Ledanski Hyde
DN: cn=Sonya Ledanski Hyde, o,
ou, email=digital1@veritext.com,
c=US
Date: 2016.02.19 14:05:51 -05'00'

Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: February 11, 2016